REMARKS

Claims 1-20 are pending in the application.

Claims 7-14 stand rejected under 35 U.S.C. 101 for allegedly being directed to non-statutory subject matter.

Applicants respectfully submit that claim 7, as cited by the Examiner, properly recites an apparatus claim, an exemplary embodiment of which is illustrated in Fig. 2 of the application. The Examiner's reference to the description in the specification of exemplary embodiments of processes and functions performed by the respective claimed "sections" does not render the claims improper. Indeed,

> "[f]or example, a claimed invention may be a combination of devices that appear to be directed to a machine and one or more steps of the functions performed by the machine. Such instances of mixed attributes, although potentially confusing as to which category of patentable subject matter the claim belongs, does not affect the analysis to be performed by USPTO personnel. Note that an apparatus claim with process steps is not classified as a "hybrid" claim; instead, it is simply an apparatus claim including functional limitations. See, e.g., R.A.C.C. Indus. v. Stun-Tech, Inc., 178 F.3d 1309 (Fed. Cir. 1998) (unpublished)." MPEP 2106(IV)(B).

Thus, claims 7-14 properly recite the respective top-level "sections" of an apparatus, and Applicants respectfully request that the Examiner withdraw the § 101 rejection.

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0073187 to Rawson, III in view of U.S. Patent No. 7,028,083 to Levine et al. Applicants respectfully traverse the rejection.

As acknowledged by the Examiner on lines 4-6 of page 6 of the Office Action, Rawson, III does not disclose, among other things, using a prediction algorithm to predict load information of resources.

The Examiner contended that paragraphs [0024]-[0027] of Rawson, III disclose predicting load information of resources on the last 3 lines of page 5 of the Office Action. Paragraphs [0024]-[0027] of Rawson, III only describe, however, a judgment that is made to determine whether or not a target apparatus, which is to be managed (hereinafter referred to as a "management target apparatus"), is operating in a normal manner within acceptable parameters. Rawson, III describes changing the period of management depending on the state of the management target apparatus. The period of management is increased with time while the management target apparatus is operating in the normal manner, and the period of management is decreased with time when the management target apparatus begins to operate in an abnormal manner.

Thus, Rawson, III, as cited and relied upon by the Examiner, does not disclose or suggest, among other things, ***predicting*** load information of resources according to a prediction algorithm, and adjusting the measuring intervals (at which the load information of the resources is measured) based on the measured load information ***and the predicted load information***, as recited in independent claims 1, 7, 11 and 15.

The Examiner relied upon Levine et al. as a combining reference that allegedly suggests using an exponentially weighted average algorithm, that is, a prediction algorithm, to predict load information of resources.

As discussed above, however, Rawson, III, as cited and relied upon by the Examiner, merely describe adjusting a period of management by monitoring an operation state over time. Rawson, III explicitly describes the nature of this technique as one of "time decay." Please see the title, abstract, and summary of Rawson, III. The Examiner cited "smoothing out aberrations" and "accurate trends" in Levine et al. as motivation for combining the cited references, but such

objectives relate only to accurate predictions, which is not a consideration for the time decay technique found anywhere in Rawson, III.

In view of the foregoing, Applicants respectfully submit that the Examiner has failed to establish a prima facie case of obviousness in failing to provide any suggestion, motivation, or objective reason—other than improper hindsight from the claimed invention itself—for one skilled in the art to alter and combine the disparate features of the "time decay" technique described in Rawson, III with the weight average prediction technique described in Levine et al. to meet the claimed invention.

Accordingly, Applicants respectfully submit that independent claims 1, 7, 11 and 15, together with claims 2-6, 8-10, 12-14, and 16-20 dependent therefrom, respectively, are patentable over the cited references for at least the foregoing reasons.

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

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